

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Nemiah F.,)
a child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Danielle F.,)
)
Appellant.)

No. A-14-310.

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

OCT 20 2014

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

IRWIN, INBODY, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

The separate juvenile court for Douglas County terminated the parental rights of Danielle F. to her daughter, Nemiah F. For the reasons that follow, we affirm.

BACKGROUND

On or about December 2, 2013, the State of Nebraska filed a juvenile petition alleging Nemiah F. was a juvenile as described in Neb. Rev. Stat. 43-247(3)(a). The petition alleged Nemiah lacked proper parental care by reason of the faults or habits of her mother, Danielle F., in that her use of alcohol and/or controlled substances placed Nemiah at risk for harm. The petition also alleged that on three separate dates, a total of six children were removed from Danielle's care, and Danielle was



unable to reunify with any of those children. The State also filed a motion for temporary custody on December 2, and the juvenile court ordered the Nebraska Department of Health and Human Services to take custody of the Nemiah, for placement in foster care or other appropriate placement, to exclude the home of Danielle.

The State's amended petition was filed December 17, 2013 adding an allegation that Nemiah came within the meaning of Neb. Rev. Stat. §43-292(2), because Danielle substantially and continuously or repeatedly neglected or refused to give Nemiah or her siblings necessary parental care and protection. Additionally the petition alleged that terminating Danielle's parental rights, with respect to Nemiah, was in Nemiah's best interests.

An adjudication and termination of parental rights hearing came before the court on February 28, 2014. Prior to the hearing, Danielle requested a continuance because she was trying to enroll in inpatient treatment. The motion was denied and the hearing proceeded as scheduled.

Melanie Jones, a child and family services specialist for NDHHS testified that part of her duties include determining whether a child should remain in the parental home. Jones interviews the children, siblings and caregivers, and makes collateral contacts with doctors, therapists, service providers,

schools, nurses and others who work with the family. Jones gathers information about the function of the family, any concerns identified through intake, and considers the safety risks present. She testified that if the risks outweigh the ability to keep the child in the home, the child will be removed.

Jones testified that Nemiah was tested for drugs because Danielle's labor was very fast, which could indicate drug use. At birth, Nemiah's meconium levels were tested and she was found to be positive for amphetamines, methamphetamine, and cocaine. Nemiah was not born with any birth defects and she appeared to be healthy. Both Nemiah and Danielle were released from the hospital after Nemiah's birth, and Danielle was not tested for drugs during her hospital stay.

The department hotline received an intake regarding Danielle and Nemiah after birth. Jones was assigned to the intake on November 28, 2013. Danielle told Jones that, at a party shortly before Nemiah's birth, she had "hit a cigarette" and then she did not feel right. Jones told Danielle that due to her history of drug use, it did not seem likely that a hit of a cigarette at a party was the cause of the positive drug screen.

Jones met with Danielle on December 2, 2013, and Danielle told Jones she had attended a party where she used cocaine and had a few drinks. Danielle denied knowingly using

methamphetamine, but stated that she uses cocaine as a coping mechanism when she is stressed. Danielle stated that she had been very stressed, so she had used drugs during her pregnancy. Jones consulted her supervisor and it was determined that non-court services would not be appropriate. An affidavit for removal was filed submitted on December 2.

Jones testified that she has access to the parent's prior juvenile court or DHHS involvement through the N-focus system. She stated it is important to see what services have previously been provided, what services the parent completed, and what concerns were identified during any prior cases. Jones testified that Danielle had an extensive history with DHHS, including nine accepted intakes. Danielle's six older children had been removed from her care in three separate juvenile cases prior to the instant case. Jones was concerned that Danielle's history indicates she is not able to rehabilitate herself, and is unwilling to engage in services benefiting the children.

During this case, the court recommended Danielle complete a chemical dependency evaluation, submit to random urinalysis tests, participate in visitation, establish sober supports, attend AA/NA meetings, complete an IDI, and participate in family support. An IDI is the newer form of a pretreatment assessment and a chemical dependency evaluation. The evaluation assesses a patient's mental health needs, as well as the

substance abuse needs. Jones testified that at the conclusion of her investigation, Jones formed an opinion that due to Danielle's unsuccessful prior cases with DHHS, and her inability to maintain sobriety, Nemiah would be at risk of harm if she remained in Danielle's care.

Kacy Anderson, an employee of Heartland Family Services, testified that she is a urinalysis tech for females. Anderson was assigned to administer Danielle's urinalysis screenings, but she was not able to get a sample from Danielle after nine attempts.

Sarah Valentine is a supervisor of the drug screening and testing department at Owens and Associates. Valentine testified that a collector for the drug screening would call their clients between 9 and 11 a.m., and if there is no answer, leave a voice message explaining that they needed to call back for their drug screen. The client has until 4:30 p.m. to call back and the collector could test until up to 7 p.m. that night. Valentine testified that if there is a call or an attempt to test, and the client does not respond, it is documented via email, printed out and kept in the same file with the completed tests. Refusals to test were also documented and put in a client's file. Clients are discharged if there is consistent non-compliance or consistent nonresponse to attempts to perform UAs.

Valentine testified that Danielle was first referred to Owens in August 2009, and Danielle was discharged as a client in November 2009. During that time, there were 16 attempts to collect a sample, and all were unsuccessful. Danielle became a client of Owens again in August 2012, and she was discharged in October 2012. During that time, there were 13 attempts to obtain a sample and all were unsuccessful.

Valentine testified that clients are advised before signing the intake form that their contact information must be up-to-date. Due to the nature of the random drug testing, testing subjects are not aware of when their testing will take place. Valentine testified that a client is put on a "call-in basis" if they are nonresponsive or noncompliant, or the client has been discharged. Danielle was put on call-in basis on September 3, 2012, and she was required to call the office between 9 in the morning and 4:30 in the afternoon to find out if she would need to submit to a UA test that day. Danielle did not ever call in after being placed on the call-in basis.

Dawn Coffey, a DHHS worker, testified that she knew Danielle because she was the ongoing worker for the family from July 2010 until December 2010. Coffey testified that the history of a parent is important when a newborn is involved, because if behaviors and patterns still exist when a parent, it creates a

safety concern for the newborn. Coffey emphasized that a person cannot ask a baby what is going on in the home.

During the first juvenile case, Tevin, Paris, Shakayla, and Monika were removed from the home. Danielle was allowed visitation and was ordered to complete chemical and psychological evaluations, maintain housing, maintain a legal source of income, abstain from the use of drugs and/or illegal substances, and submit to UAs. Coffey testified that Danielle never obtained a psychological or chemical evaluation, she was not visiting with her children, she was not employed, and she was living with her mother. Coffey testified that Danielle did submit to some UAs, but she was not consistent. Coffey testified that Danielle never reunified with those four children.

Coffey was also involved in the case that began when Danielle had her fifth child, Amari. Coffey received a referral through the abuse and neglect hotline regarding Danielle and Amari, and Coffey submitted an affidavit in support of removal of that child. Coffey based her recommendation on Danielle's noncompliance with her previous court orders, her unstable housing situation, and the fact that the only UA Danielle submitted to, came back positive for cocaine, marijuana, and benzodiazepines. Amari was five days old when she was removed from the home. Danielle was offered a pretreatment assessment, visitation and random UAs. Coffey testified Danielle did not

complete the pretreatment assessment and she did not consistently participate in visitations with Amari. Coffey testified that visitation with Amari ended in at the end of November, and Danielle never reunified with Amari.

Danielle's sixth child, Tavana, was made a state ward in August 2012. Danielle was provided psychological and chemical dependency evaluations, drug testing, parenting time, transportation, and case management. Danielle did not successfully complete the psychological evaluation, drug testing, or family support, and she never reunified with Tavana.

Coffey testified that Danielle's limited finances were an issue, and made it difficult to secure permanent housing. Danielle's housing situation made it difficult to participate in drug testing and visitation, and Danielle did not always have a working telephone number. Coffey testified that Danielle did not have a car and transportation was also an issue for her.

Jennifer Schaaf testified that she was a family permanency specialist for Nemiah beginning in December 2013. Schaaf testified that Nemiah was made a state ward because Nemiah was born with drugs in her system. Schaaf testified that she offered Danielle drug testing services, parenting time, a chemical dependency evaluation, transportation, family support, and an IDI, which is a newer form of pretreatment assessment. Schaaf

testified that two separate IDIs were set up with Heartland Family Services, but Danielle never completed the IDI, or the chemical dependency evaluation. Schaaf testified that Danielle did not complete the evaluations because she said she had transportation issues, and she was taking care of her younger children. By that time, Danielle had not reunified with the younger children; she had relinquished her parental rights and the children had become adopted by Danielle's sister, Loretta Dunn. Schaaf testified that Danielle had been provided with bus tickets for transportation.

Schaaf testified that she discussed with Danielle the importance of compliance with UAs, as they could prove to the court that Danielle was maintaining her sobriety. Schaaf testified that Danielle expressed that she did want to test, that she was clean, but that she could not test when the worker came to her home because she had to supervise the younger children in the home. Family support was offered to Danielle, which would have helped her set up evaluations and complete the court's orders, but Danielle declined. Schaaf testified that Danielle declined because she was confident that she would be accepted into inpatient treatment.

Schaaf testified that she was concerned that Danielle had been involved in the system for so long with so many different cases. She testified that Danielle's pattern of behavior was

continuing and there was not a showing that the safety threat, Danielle's drug use, had been fully addressed. Schaaf testified that Danielle's visits with Nemiah were going well. Nonetheless, Schaaf testified that she believed that termination of Danielle's parental rights would be in Nemiah's best interest.

Juana Miranda is a family support worker employed by Beneficial Behavioral Health Services. She was the worker who supervised the visits between Danielle and Nemiah. Danielle had daily visits with Nemiah, held in Dunn's home, where Danielle had been residing. Miranda testified Danielle's visits were consistent and she missed between three and five visits total. Miranda testified Danielle would feed Nemiah, change diapers, hold Nemiah, and occasionally bathe her. Miranda testified that Danielle did not show signs of using or being intoxicated when the visits were occurring. Miranda did not have authorization to drug test Danielle, therefore she was never tested for drug use during the visits. Miranda testified that Danielle was affectionate toward Nemiah and showed concern for Nemiah's well-being.

ASSIGNMENTS OF ERROR

Danielle asserts the trial court erred in finding sufficient statutory basis to terminate her parental rights pursuant to Neb. Rev. Stat. §43-292, and in finding that termination was in Nemiah's best interests.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Aaliyah M.*, 21 Neb. App. 63, 837 N.W.2d 98 (2013).

ANALYSIS

To terminate parental rights, the State must prove by clear and convincing evidence that one or more of the 11 statutory grounds listed in *Neb. Rev. Stat. §43-292* have been satisfied and that termination is in the child's best interests. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006).
Statutory Grounds for Termination.

The court may find the statutory grounds are satisfied if the evidence shows that the parent has substantially and continuously or repeatedly neglected or refused to give the child or a sibling of the child necessary parental care and protection. *Neb. Rev. Stat. § 43-292(2)*.

Prior neglect can be a basis for termination of parental rights only in conjunction with proof by the State which establishes that termination is in the best interests of the minor children involved in the current proceeding. *In re Sir Messiah T.*, 279 Neb. 900, 782 N.W.2d 320 (2010). Therefore, past neglect, along with facts relating to family circumstances which go to best interests, are all properly considered in a parental

rights termination case based on neglect. *Id.* When considering prior neglect as a basis for termination of parental rights under *Neb. Rev. Stat. 43-292(2)* (Reissue 2008), evidence of neglect of a sibling of an adjudicated child and best interests of the minor involved in the current case must be proven. *In re Sir Messiah T.*, *supra*.

In *In re Interest of Sir Messiah T.*, the biological mother asserted she should be given a "clean slate" with regard to the four children who were under consideration in that case, and the prior neglect of the three children subject to a prior termination case should be ignored. The Nebraska Supreme Court quoted a prior opinion of this court which stated that previous relinquishments:

Do not bode well for [the parents'] stability and ability as parents, and they serve to convince us that [the current juvenile] is at risk. The fact that a parent has previously relinquished an adjudicated child is relevant evidence in an adjudication proceeding concerning a child born soon thereafter. In short, given the purpose of the juvenile code, one's history as a parent is a permanent record and may serve as a basis for adjudication depending on the circumstances. Relinquishment of parental rights are not any sort of "pardon," which is how [the parents] would have us treat the relinquishments they made. They cite no authority on point for such notion, and while we have found none either, we suggest one's history as a parent speaks to one's future as a parent.

Id., quoting *In re Interest of Andrew S.*, 14 Neb. App. 739, 714 N.W.2d 762 (2006). In *In re Interest Sir Messiah T.*, it was found that the earlier termination of parental rights to the three siblings for neglect was readily established. Further the evidence showed the mother was offered numerous reunification plans and there was sufficient current evidence that she was not successful in rehabilitation and reunification. The Nebraska Supreme Court affirmed the decisions of the Separate Juvenile Court for Douglas County which terminated the mother's rights, and the Nebraska Court of Appeals which affirmed that decision.

Here, there is evidence of prior neglect, which led to Danielle relinquishing her parental rights to six of Nemiah's older siblings in three separate juvenile cases. The first case began in 2009 and Monika, Tevin, Shakayla and Paris became state wards. Danielle was unable to reunify with those children. Amari was made a state ward in 2010, and Taviana was made a state ward in 2012. In each of these cases, the petition alleged that Danielle's use of alcohol and/or controlled substances placed the children at risk for harm. The record shows Danielle was offered numerous services with the goal of reunification with the children, and she was unable or unwilling to complete the services, or remove the safety threat, which was her drug use. There was oral testimony regarding each of these cases offered by workers involved in those cases, including Melanie Jones,

Dawn Coffey, and Jennifer Schaaf. Exhibits 2, 3, and 4, were also accepted into evidence, and they contained the petitions, pleadings and orders from each of the prior cases.

Like the mother in *Interest of Sir Messiah T.*, Danielle urges us to disregard the evidence of prior neglect and wipe her slate clean, as she asserts she was told those prior relinquishments would not be used against her. There was testimony at the adjudication that some workers tell parents that if they relinquish, and get pregnant in the future, that the relinquishments will not be used against them. The case law is clear that an individual's history as a parent, including the behavior demonstrated during prior juvenile cases is relevant in subsequent juvenile cases.

Further, the court here was very clear that Danielle was not being judged based on the fact that she relinquished her parental rights to Nemiah's siblings; rather it was her pattern of behavior and the fact that she continually failed to address the safety concerns that was problematic.

Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proven. *In re Jagger L.*, supra. The evidence of prior neglect with regard to the older siblings was sufficient to show that one or more of the statutory grounds listed in 43-292 existed. Thus, we find the

court did not err in finding the State proved by clear and convincing evidence that there was a statutory basis for termination of Danielle's parental rights. However, applying § 43-292, we still must consider whether termination of Danielle's parental rights is in the Nemiah's best interests.

Best Interests.

Danielle asserts the trial court erred in finding that termination of her parental rights was in Nemiah's best interests. In terminating her parental rights, the court relied on *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008), which stated that a minor child cannot and should not be suspended in foster care or be made to await uncertain parental maturity and should have permanency. She asserts she was not given sufficient time to rehabilitate herself, as the child was out of the home for only approximately 12 weeks. She states that she had secured stable housing, was participating in visitation, and was living with a supportive family member.

For purposes of determining whether to terminate parental rights, the courts have recognized that children cannot be suspended in foster care or be made to await uncertain parental maturity. *In re Destiny A.*, 274 Neb. 713, 742 N.W.2d 758 (2007). In considering a motion to terminate parental rights, the law does not require perfection of a parent; instead, courts should look for the parent's continued improvement in parenting skills

and a beneficial relationship between parent and child. *In re Interest of Athina M.*, 21 Neb. App. 624, 842 N.W.2d 159 (2014). However, when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. *In re Destiny A.*, supra.

There was testimony that Danielle was actively participating in visitation, and she demonstrated her care for the child during those visits. However, there was also evidence that Danielle had not addressed the safety threat which led to this case, and each of the three prior juvenile cases. Danielle admitted to using drugs, specifically cocaine, shortly before Nemiah's birth, and admitted that she continues to use cocaine when she is stressed. Though Nemiah did not exhibit withdrawal symptoms or birth defects, her meconium levels showed she had cocaine, methamphetamine, and amphetamine in her system at birth.

Danielle was offered several services to aid her in rehabilitating herself, but in this case, as in the prior three cases, she chose not to comply with services. Though Nemiah was only in foster care for a short period of time, Danielle has not placed herself in a position where she is able to safely parent a child. She did not complete the ordered chemical dependency and psychological evaluations, or follow through on either one

of the appointments to complete her IDI. Danielle cited a lack of transportation as the reason for missing her IDI, even though she was offered transportation, in the form of bus tickets, as a service.

Jennifer Schaaf testified that she encouraged Danielle to comply with the ordered services, especially because it would demonstrate that Danielle was addressing the safety threat to Nemiah, which was drug use. She ensured that Heartland Family Services had Danielle's current address and phone number, and discussed the importance of completing UAs to show the court she had maintained her sobriety. Danielle did not provide a sample for any of the ordered urinalysis testing. Nine attempts were made to collect a sample between December 8, 2013 and February 25, 2014 and none were successful. Without that information, it is impossible to confirm whether Danielle resolved her drug dependency issues.

Melanie Jones testified that, in her opinion, Nemiah would be at risk for harm if she was in Danielle's care due to the unsuccessful cases with DHHS and Nebraska Families Collaborative, and Danielle's inability to maintain sobriety. Dawn Coffey testified that one's history as a parent is important because if behaviors and patterns still exist it creates a safety concern for the newborn. Schaaf testified that she was concerned because Danielle had been involved in the

system for so long in so many different cases. This shows the cycle was continuing at the safety threat had never been fully addressed. Schaaf testified that even though visits between Danielle and Nemiah were going well, it was still her opinion that Danielle's parental rights should be terminated.

Upon our review of the record, we find that the trial court did not err in finding clear and convincing evidence that termination of Danielle's parental rights was in Nemiah's best interests.

CONCLUSION

We find the separate juvenile court for Douglas County did not err in finding that one or more of the statutory grounds for termination existed and that termination of Danielle's parental rights was in Nemiah's best interests.

AFFIRMED.